

Appl. No. 10/089,331
Atty. Docket No. 8166M
Amdt. dated January 20, 2005
Reply to Final Office Action of October 22, 2004
Customer No. 27752

REMARKS

No amendments to the claims are presented in the enclosed Request for Continued Examination. Claims 1-6, 10-20, 22, 23, and 25-30 remain pending in the instant Application presented for the Examiner's review in light of the following comments.

Rejections Under 35 U.S.C. §112

Claims 1-6, 10-20, 23, 25-28, and 30 have been rejected under 35 U.S.C. §112, ¶1. In this regard, the Examiner is respectfully directed to Applicants' Specification beginning on page 12, line 21, which states, "This distribution head is ideally an extension of the pouch material that has been sealed in a way to form channels for the product to flow to another region." Additionally, the Examiner is respectfully directed to the Specification beginning on page 14, line 3, which states as follows:

Figure 19 shows an alternative embodiment of a reservoir. In this embodiment areas 82 of the lock up seal aid in the prevention of over-dosing by inhibiting fluid flow through the dosing channel once activated. Areas 84 are preferably not sealed and extend beyond the end of the dosing channel. Once the cell is pressurized, these areas 84 fill and provide a more rigid three-dimensional structure to the cell and prevent the channel from folding and clamping shut. **Areas 86 of lock up seal can be added to provide a "target zone" for the frangible seal.** Thus, burst force consistency is improved by limiting the width 88 of the frangible seal 40 and manufacturing is made easier by having a larger zone 90 where the frangible seal can be located. Area 86 also aids in forming a natural fold line for protecting the frangible seal.

Figure 7, for example, is one example of a reservoir design including a distribution channel 44. The reservoir 30 of Figure 7 includes a plurality of outlet ducts 41, a plurality of distribution apertures 42, and an elongated channel 44 which separates the chamber 47 from the distal end 43 of the assembly. Fluid flow between the chamber 47 and the channel 44 is

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controlled by the frangible or rupturable seal 45, which illustrates the use of a stress-concentration notch 46. The distribution channel 44 may be of a material and configuration such that it is "self-sealing" and collapses shut to restrict, if not preclude, fluid flow except when the chamber is substantially pressurized. For example, a channel may be formed by making two substantially parallel seals along facing layers of a pouch, where the space between these seals becomes a channel for fluid to move from the reservoir to the distribution aperture(s). The channel will naturally lay flat (and thereby closed) due to the seals, but will become almost tubular when the reservoir is pressurized and filled with fluid traveling through the channel. Upon release of the pressure, the channel will tend to naturally return to its flat state, causing a sealing effect to prevent further product delivery. The dimensions of the channel may be optimized based upon the viscosity of the product being dispensed from the reservoir. (Emphasis added)

Additionally, the Examiner is respectfully directed to Figures 7, 19, 20, 21, and 24. For example, Figure 7 depicts an exemplary reservoir having a distribution channel 44 formed by making two substantially parallel seals along facing layers of the pouch, where the space between the seals becomes a channel for fluid to move from the reservoir to the distribution aperture(s). (Specification p. 14, ll. 20-23)

In light of this abundant disclosure and the drawings accompanying the instant Application, it is hard for Applicants to understand how the originally filed disclosure fails to describe or support "a predetermined location" for the resealable channel or distribution channel. Applicants respectfully request the Examiner to withdraw this rejection and allow the instant claims forthwith.

Claims 2, 13, and 14 have been rejected under 35 U.S.C. §112, ¶1 because the Application does not reasonably provide enablement for "a first substantially fluid-impervious barrier layer is located between said reservoir and said second internal surface of said second side," as called for by Claim 2. The Examiner is respectfully directed to Figure 2 depicting an exemplary embodiment of the present invention. Barrier layer 25 is disposed between reservoir 30 and the second internal surface of the second side 34. (See p. 8, ll. 16-

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25; p. 22, ll. 30-33) Again, in light of this abundant disclosure and after a fair review of the figures, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §112, ¶1 rejection to Claims 2, 13, and 14.

Further, with regard to the Examiner's rejection under 35 U.S.C. §112, ¶1, Applicants respectfully direct the Examiner's attention to settled Federal Circuit case law. In *Martin v. Meyer*, 823 F.2d 500, 3 U.S.P.Q. 2d 1333 (1987), the Federal Circuit stated, "It is not required that the application describe the claim limitations in greater detail than the invention warrants." The description must be sufficiently clear that persons of skill in the art will recognize that the applicant made the invention having those limitations. *See id.* Further, the Federal Circuit in *Fujikawa v. Wattanasin*, 93 F.2d 1559, 39 U.S.P.Q. 2d 1895 (1996) stated that an *ipsis verbis* disclosure is not necessary to satisfy the written description requirement. Instead, the disclosure need only **reasonably convey** to persons skilled in the art that the inventor had possession of the claimed subject matter in question. *See id.* Further, M.P.E.P. §2.163(i)(B) states that, "There is *in haec verba* requirement in regard to the support of claim limitations." Therefore, it is Applicants' position, in light of this well settled Federal Circuit case law and established PTO process and procedures, that Applicants' written description provides proper support for all Applicants' claimed subject matter.

With regard to the Examiner's rejection to Claims 13 and 14 under 35 U.S.C. §112, ¶1, again Applicants respectfully direct the Examiner's attention to Figure 2. Fluid impervious barrier layer 27 is clearly shown positioned between the first barrier layer 25 and the second internal surface 34. (p. 28, ll. 1-4) Based upon a fair reading of the Specification and claims and a review of the drawings, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §112, ¶1 rejection to Claims 13 and 14.

Rejection Under 35 U.S.C. §102

Claim 29 has been rejected under 35 U.S.C. §102(b) over Ketner, U.S. Patent No. 3,636,922. Applicants respectfully traverse this rejection for the following reasons:

1. Applicants' Claim 29 claims an applicator comprising, *inter alia*, a flexible film dosing reservoir comprising at least one frangible seal and a distribution channel disposed proximate the seal. The product contained within the flexible film dosing reservoir is

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sequentially releasable through the seal and through the distribution channel to the first substrate via multiple applications of pressure to the reservoir.

2. Applicants are at a loss to understand how a distribution channel, as claimed and described by Applicants, can be formed by the edges 32 of the *Ketner* container. The walls 28 of the *Ketner* container are bonded at edges 32 by heat pressure, cementing, crimping, or any other suitable method so that the seal 33 formed at the abutted edges breaks under pressure. (2:62-66) Therefore, the seal 33 is merely a place where edges 32 are formed to allow material within the disclosed container to exit the container. This is not a distribution channel disposed proximate to the seal.

3. In fact, the *Ketner* reference is silent with regard to providing any distribution channel disposed proximate to a seal.

Due to these considerations, the *Ketner* reference fails to teach each and every element of Applicants' claimed invention. Therefore, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §102(b) rejection with respect to Claim 29.

Rejection Under 35 U.S.C. §103

Claims 1-5, 10-20, and 25-29 have been rejected under 35 U.S.C. §103(a) over Gerber, et al., U.S. Patent No. 2,209,914 in view of *Ketner*. Additionally, Claim 30 has been rejected under 35 U.S.C. §103(a) over *Ketner* in view of Gerber. Applicants traverse these rejections for the following reasons:

1. As discussed *supra* Applicants' Claim 1 claims an applicator comprising, *inter alia*, a flexible film dosing reservoir comprising a resealable channel having a predetermined location.
2. Applicants' Claim 25 claims an applicator comprising, *inter alia*, a rupturable laminate film reservoir comprising a resealable channel having a predetermined location.
3. Applicants' Claim 29 claims an applicator comprising, *inter alia*, a flexible film dosing reservoir comprising at least one frangible seal and a distribution channel disposed proximate said seal.
4. Applicants' Claim 30 claims an applicator comprising, *inter alia*, a reservoir containing a product and having at least one weak region having a comparatively low burst force and having a distribution channel at a predetermined location on the reservoir.

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5. The *Gerber* reference discloses a gelatinous capsule disposed between opposed faces of a pad. (2:26-35; Fig. 3) In order to use the invention, a pin or other sharp instrument is passed through the outer covering or padding material and allowed to penetrate the outer shell of the capsule or disc. (3:41-45).

6. As the pin may be passed through virtually any area of the surface of the disclosed capsule or disc, the reservoir is not provided with a resealable channel having a predetermined location. In fact, this is the epitome of an undetermined location in that the pin is not restricted to penetrating the walls of the capsule or disc in a single location.

7. Likewise, the *Gerber* reference does not disclose that the capsule or disc comprises a rupturable laminate film.

8. Additionally, the *Gerber* reference is silent and does not disclose a distribution channel disposed proximate to the seal. Please recall that Applicants disclose that a distribution channel may provide a restriction and/or may be used to allow the product to be delivered to a location of the applicator that is remote from the location of the reservoir. Therefore, it is hard to understand how the gelatin capsule of the *Gerber* reference can be considered to have a distribution channel disposed proximate to any seal.

8. Likewise, the *Ketner* reference discloses that the walls [of chamber 27] are weakened by score lines 34 so that the container will break all around its periphery and at the sides when pressure is applied manually at opposite sides of the applicator. (2:54-57) Further, pressure then breaks the seal 33 to open the container all around and **release all the fluid** into the surrounding porous, possibly absorbent, sheets 26. (2:72-74; emphasis added)

9. Thus, it can be seen that the *Ketner* reference never contemplates providing a resealable channel, as required by Applicants' claims.

No motivation is provided in either the *Gerber* or *Ketner* references to provide Applicants' claimed applicator comprising a reservoir comprising either a resealable channel having a predetermined location or a reservoir provided with a distribution channel, as claimed by Applicants' independent Claims 1, 25, 29, and 30, respectively. The *Gerber* reference fails to provide a focus delivery of product from a reservoir to an external surface through a distribution channel. The *Ketner* reference only provides for the wholesale transfer of a product in a reservoir to an external surface.

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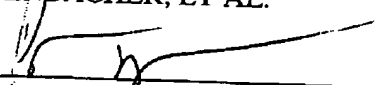
Because of these considerations, the *Gerber* and *Ketner* references do not suggest what Applicants claim as their invention inasmuch as there is no disclosure, teaching, or suggestion to provide Applicants' claimed invention. Thus, the *Gerber* and *Ketner* references, alone or in combination, fail to render obvious each and every recited feature of Applicants' independent claims. Further, because Claims 2-6, 10-20, 22, 23, and 26-28 all depend or indirectly from Applicants' Claims 1 or 25, they contain all of their respective limitations. Therefore, Applicants request that the arguments made above concerning the allowability of Claims 1 and 25 are equally applicable to the rejection of the claims dependent thereon under 35 U.S.C. §103(a). Thus, Applicants hereby request reconsideration and withdrawal of the Examiner's 35 U.S.C. §103(a) rejections herewith.

Conclusion

Based on the foregoing, it is respectfully submitted that each of Applicants' remaining claims is in condition for allowance and favorable reconsideration is requested.

This response is timely filed pursuant to the provisions of 37 C.F.R. §1.8 and M.P.E.P. §512, and no fee is believed due. However, if any additional charges are due, the Examiner is hereby authorized to deduct such charge from Deposit Account No. 16-2480 in the name of The Procter & Gamble Company.

Respectfully submitted,
GRUENBACHER, ET AL.

By 
Peter D. Meyer
Attorney for Applicants
Registration No. 47,792
(513) 634-9359

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